

CHAPTER 28 SUBCONTRACTING

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2800 CONSENT TO SUBCONTRACT

- 2800.1 The contracting officer may require consent to subcontract in any instance where the contracting officer determines that it would be in the best interests of the District.
- 2800.2 The contracting officer shall require consent to subcontract in those instances where approval of subcontractors is required by the Act or this title.
- 2800.3 The contracting officer may require consent by the District to all or any part of the subcontracts to be issued under a prime contract.
- 2800.4 The contracting officer may require, as part of an invitation for bids ("IFB") or request for proposals ("RFP"), that each responding vendor include in its response a list of proposed subcontractors, a list of tasks or items which the vendor intends to subcontract, or both.
- 2800.5 In determining whether to require consent to subcontract, the contracting officer shall consider the following:
- (a) The complexity of the work to be done under subcontracts;
 - (b) The value of the subcontract(s);
 - (c) Whether the District's interests can be adequately protected without requiring consent; and
 - (d) Any other relevant factors.
- 2800.6 If the contracting officer does not require consent to subcontract, the contracting officer shall include a written justification for his or her decision in the contract file in each of the following circumstances:
- (a) The prime contract is a fixed-price incentive or fixed-price redeterminable contract and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000);
 - (b) The prime contract is a firm-fixed-price or fixed-price contract with an economic price adjustment provision and a new subcontract results from an unpriced

modification to the prime contract and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000);

- (c) The subcontract is to be a cost-reimbursement, time-and-materials, or labor-hour contract and the subcontract price is estimated to exceed two hundred thousand dollars (\$200,000);
- (d) The subcontract is to be one of several subcontracts under a prime contract with a single subcontractor for the same or related supplies or services which in the aggregate are estimated to total more than one hundred thousand dollars (\$100,000) and the prime contract price is estimated to exceed five hundred thousand dollars (\$500,000); or
- (e) Contracts for mortuary services, refuse services, or shipment and storage of personal property, and the District requires prior approval of subcontractors' facilities.

2800.7

If the contracting officer does not require consent to subcontract under a cost-reimbursement or letter-prime contract (other than facilities contract), the contracting officer shall include a written justification for his or her decision in the contract file in the following circumstances:

- (a) The subcontract is to be for fabrication, purchase, rental, installation, or other purchase of special test equipment valued at more than ten thousand dollars (\$10,000) or of any items of industrial facilities;
- (b) The subcontract will have experimental, developmental, or research work as one of its purposes;
- (c) The subcontract is to be a cost-reimbursement, time-and-materials or labor-hour subcontract; or
- (d) The subcontract is to be a fixed-price subcontract that exceeds either ten thousand dollars (\$10,000) or five percent (5%) of the total estimated cost of the prime contract.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1609 (February 26, 1988).

2801

CONTRACTING OFFICER'S RESPONSIBILITIES

2801.1

The contracting officer shall ensure that any requirements for consent to subcontract are included in the solicitation for the prime contract.

2801.2

Upon receipt of the contractor's request for consent to subcontract, the contracting officer shall do the following:

- (a) Promptly evaluate the contractor's request for consent to subcontract;
- (b) Obtain assistance in the evaluation from audit, pricing, technical, or other specialists as necessary; and

- (c) Notify the contractor in writing of consent to subcontract or the withholding of consent to subcontract, including any changes or corrections required.
- 2801.3 The contracting officer's consent to subcontract shall not constitute a determination of the acceptability of the subcontract terms or price or of the allowability of costs, unless the consent to subcontract specifies otherwise.
- 2801.4 The contracting officer shall not consent to subcontract in any of the following instances:
- (a) When the fee in a cost-reimbursement subcontract exceeds any applicable fee limitations;
 - (b) When a payment under the subcontract is on a cost-plus-a-percentage-of-cost basis;
 - (c) When the contracting officer is obligated to deal directly with the subcontractor;
 - (d) When the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor are made binding on the District; or
 - (e) When there is a repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts.
- 2801.5 The contracting officer shall not refuse consent to subcontract merely because the subcontract contains a clause giving the subcontractor the right of indirect appeal to the Contract Appeals Board if the subcontractor is affected by a dispute between the District and the prime contractor.

SOURCE: Final Rulemaking published at 35 DCR 1610 (February 26, 1988).

2802 REVIEW OF REQUESTS FOR CONSENT

- 2802.1 When a solicitation contains a requirement for consent to subcontract, the contractor shall be required to submit a request for consent to subcontract.
- 2802.2 The contracting officer shall review the request for consent to subcontract and supporting data, and shall consider the following issues:
- (a) Whether the selection of the particular supplies, equipment, or services is technically justified;
 - (b) Whether the contractor has complied with the prime contract requirements regarding subcontracting with certified minority businesses or District-based businesses;
 - (c) Whether adequate price competition was obtained or its absence properly justified;
 - (d) Whether the contractor adequately assessed and disposed of subcontractor alternate proposals, if offered;

- (e) Whether the contractor has a sound basis for selecting and determining the responsibility of the particular subcontractor;
- (f) Whether the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certification;
- (g) Whether the proposed subcontract type is appropriate for the risks involved and is consistent with current policy;
- (h) Whether adequate consideration has been obtained for any proposed subcontract that will involve the use of District-furnished facilities;
- (i) Whether the contractor has adequately and reasonably translated the prime contract technical requirements into subcontract requirements; and
- (j) Whether the subcontractor has been suspended, debarred, or is otherwise ineligible for award.

SOURCE: Final Rulemaking published at 35 DCR 1611 (February 26, 1988).

2899 DEFINITIONS

2899.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

Consent to subcontract - the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

Facilities contract - a contract under which District facilities are provided to a contractor or subcontractor by the District for use in connection with performing one (1) or more related contracts for supplies or services.

Subcontract - a contract between a prime contractor (or, in some instances, a subcontractor) and a subcontractor to furnish supplies or services for performance of a part of a prime contract or another subcontract, including, but not limited to, purchase orders, and changes and modifications to purchase orders.

Subcontractor - a supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

SOURCE: Final Rulemaking published at 35 DCR 1612 (February 26, 1988).